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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 1111

IN RE: DAN PIVER,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

IN RE: DAN PIVER,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Your petitioner, Dan Piver, prays that a writ of certiorari issue to review the decision of the Supreme Court of Florida, entered in the above entitled case on November 16, 1965.

OPINIONS BELOW

The order of denial, both on the original petition and on a motion to amend the final order, being without opinion is appended hereto as Appendix A. The 'opinions' of the administrative agency in this case, The Florida Board of Bar Examiners, are appended hereto as Appendix B. Section 21 of the Rules Creating the Florida Board of Bar Examiners is appended hereto as Appendix C.

JURISDICTION

The order sought to be reviewed was made an entered on November 16, 1965. A motion to amend the final order was filed on December 2, 1965 and was denied on January 25, 1966. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3). Upon the application of counsel for the petitioner, this Court extended the time for the filing of this petition for a writ of certiorari to and including March 15, 1966.

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state may, consistent with due process of law required by the Fifth and the Fourteenth Amendments to the Constitution of the United States, deny an applicant permission to take the bar examination, despite overwhelming evidence of the applicant's good moral character and other requirements without first having been furnished grounds or reasons for such denial, nor furnished with the standards required and is denied the opportunity for review.

2. Whether a state may, consistent with the due process of law required by the Fifth and by the Fourteenth Amendments to the Constitution of the United States, violate its own rules of procedure, where upon a showing of dissatisfaction with the recommendation of the Board of Bar Examiners with respect to character and fitness, it was incumbent upon the Secretary of the Board to place the file and other available information with the Florida Supreme Court for review and same was not done as required.

3. Whether, where there is no provision in the rules relating to admission to the bar of a state for the submission of a new application after rejection of a prior application, the refusal to accept and act upon such a new application is consistent with the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V, United States Constitution "* * * *nor be deprived of * * * * property, without due process of law; * * * * *"

Amendment XIV, United States Constitution, Section 1, "* * * * nor shall any State deprive any person of * * * property with without due process of law.***"

STATEMENT OF THE CASE

In December 1955, the petitioner filed with the Florida Board of Bar Examiners, an application for admission to the Bar examination of the State of Florida pursuant to ARTICLE IV, Section 22 (C) of RULES ADOPTED BY THE FLORIDA BOARD OF BAR EXAMINERS AND ORDER OF THE SUPREME COURT ADOPTING SAME.

The application having been accepted, petitioner, upon request of the Board, appeared before the Board on March 17, 1956, and after lengthy questioning, petitioner was excused and immediately thereafter was advised orally by the Executive Secretary of the Board that admission to the Bar examination was refused on the

grounds that the Board felt that the educational standards as set forth in the Rules had not been met.

The petitioner replied to the Executive Secretary that application was made on the basis of having practised in a sister jurisdiction for a period in excess of ten years and requested advice of the Board as to the standards and as to the particular grounds for refusal. The Executive Secretary replied that he was not empowered by the Board to make any further statement.

On March 26, 1956, by letter from the Florida Board of Bar Examiners the petitioner was advised that admission to take the Bar examination was refused on the grounds that petitioner had failed to meet the requirements with respect to character and fitness.

On April 2, 1956, the petitioner answered by letter challenging the change in reasons for denial of admission to take the Bar examination, and requested permission to again appear before the Florida Board of Bar Examiners and for permission to take the Bar examination scheduled for July, 1956.

On April 5, 1956, by letter from the Florida Board of Bar Examiners, the petitioner was advised that denial for admission to take the Bar examination was based on the ground that petitioner not only did not meet the pre-legal educational requirements as provided by the Rules, but on the further ground that the petitioner did not measure up to the standards of character and fitness required by the rules.

Nine years later, on April 7, 1965, the petitioner filed

an application, de novo, together with the required documents, exhibits and prescribed fees, again seeking admission to the Florida Bar Examination pursuant to ARTICLE IV, SECTION 22 (C) OF RULES RELATING TO ADMISSION TO THE FLORIDA BAR.

The Florida Board of Bar Examiners, by its Executive Secretary, advised petitioner that having no precedent for a re-application, acceptance or refusal, must be by a decision of the full Board.

Thereafter by letter, the petitioner was advised that at a formal session of the Board held on May 21, 1965, the Board found that the Rules do not provide for re-application, and petitioner's application, exhibits, supporting documents and fees were returned.

On July 5, 1965, the Petitioner filed with the Supreme Court of Florida, an Original Petition for Leave to File a New Application for Admission to the Bar Examination and for other Relief, together with exhibits and a brief in support of the petition. A Response supported by a brief was filed by the Florida Board of Bar Examiners on or about October 4, 1965 to which Petitioner filed a Reply with supporting Brief on October 15, 1965. On November 16, 1965, The Supreme Court of Florida, without opinion, denied the petition. On December 2, 1965, the Petitioner filed a Motion to Amend Final Order on the grounds that the claim of violation of rights under the Fifth and Fourteenth Amendments of the Constitution of the United States had been raised. This Motion was denied on January 25, 1966.

The federal questions herein were raised in the

petition filed in the Supreme Court of Florida. The questions were raised specifically in paragraphs 13 and 14: "That the then existing Florida Board of Bar Examiners by denying the petitioner permission to take the Bar examination upon grounds stated as set forth in Exhibits Nos. 1, 2 and 3, violated the petitioner's constitutional rights, in that he was presented with no formal charges or specifications, nor confronted with witnesses nor accusers and therefore the conclusion reached by the Board was without rational connection to the qualification of the petitioner's fitness or capacity to practise law; that because of this action the petitioner suffered and has suffered a denial of practising his profession in the State of Florida where he is domiciled and resident." * * * * "That the refusal by the Florida Board of Bar Examiners to accept the petitioner's new application on the grounds that the Rules do not provide for re-application * * * *, is unconstitutional and arbitrary, and that petitioner should be permitted to re-apply."

The Supreme Court of Florida did not expressly pass upon the constitutional issues, though of course it could not have denied the petition without resolving the constitutional questions against the petitioner.

REASONS FOR GRANTING THE WRIT

1. After the filing of the petitioner's original application for admission to take the bar examination in 1955, the petitioner was required to appear before The Florida Board of Bar Examiners on March 17, 1956. Thereupon the petitioner was questioned at length with respect to many topics and subjects by various members of the Board and the petitioner gave information and

answers to the questions propounded forthrightly, completely, sincerely and honestly. At no time during the hearing, prior thereto or thereafter, was petitioner served with or presented with any specifications of charges, nor was he confronted with witnesses or accusers and was not permitted to refute, in person or through others, charges if any there were.

In APPLICATION OF ONETT, Fla., 132 So. 2d. 175, the Board served Onett with specifications in which he was charged with having committed two actions and the same document advised that Onett had the right to submit evidence to rebut the charges. In the instant matter, the petitioner was not given the benefit of service of specifications; was not advised of the right to submit evidence in rebutal; but in fact was refused an opportunity, after request, to re-appear before the Florida Board of Bar examiners.

COLEMAN v WATTS, Fla., 81 So. 2d. 650 is a case directly in point with that of the petitioner. The facts are startingly similiar. The Supreme Court of Florida held that Coleman was not afforded due process when he was never informed of the nature of the charges or complaints against him; was not confronted with witnesses or complainants; and, because of the lack of such information, was deprived of the fair opportunity to refute any of the charges or complaints upon which the Board apparently based its decision.

In WILNER v COMMITTEE ON CHARACTER AND FITNESS, 373 U.S. 96, 10 L. ed 2d. 224, 83 S. Ct. 1175 and in SCHWARE v BOARD OF BAR EXAMINERS, 353 U.S. 232, 1 L. ed. 796, 77 S. Ct. 752, this Court empha-

sized "that procedural due process often requires confrontation and cross examination of those whose word deprives a person of his livelihood."

The petitioner, denying any improper behavior, and upon a showing of good moral character and proficiency in law, was determined to be of "highly questionable character." This conclusion was reached, it can only be surmised from the nature of the questions, from a business transaction, unconnected with the practise of law, and upon the fact that the petitioner had filed suits to recover fees due. The petitioner has never been charged with the commission of an offense or crime; has never been reprimanded or criticised by any board, commission, committee or professional association; has never been subjected to any disciplinary action by a Court or administrative agency; and has never been admonished by any group or council, either connected with or disconnected with the practise of law.

The petitioner was and is a respected member of the communities wherein he has resided and is residing; having received many commendations and honors. The actions of the Florida Board of Bar Examiners and the Court below, we submit, raises an important constitutional issue of both substantive and procedural due process, resolved below not in accord with the applicable decisions cited.

2. ARTICLE IV., SECTION 21 of the Order of Court Creating the Florida Board of Bar Examiners, which section was in full force and effect upon the date of the first application by the petitioner and appended hereto as Appendix C, made it incumbent upon the Execu-

tive Secretary of the Florida Board of Bar Examiners to place the file and other available information with the Supreme Court of Florida upon a candidate being dissatisfied with the Board recommendation about character and fitness. The Executive Secretary and the Board were informed by letter of the petitioner' dissatisfaction with the Board recommendation. However the file and other available information was not placed before the Supreme Court of Florida as required by its own rules. Consequently, no Justice of the Court was able to interview the candidate and make inquiry of the Board in order to determine whether the candidate met the standards of character and fitness required.

While another section of the rules permitted a reconsideration; such is permitted only on the basis of new and additional matters. However, since the petitioner felt that the Board had reached the conclusion erroneously, the petitioner did request an opportunity to appear before the Board; such request was ignored and instead the Board advised the petitioner that refusal was grounded on additional and new conclusions.

As mentioned in the SCHWARE and WILNER cases, cited heretofore, the refusal to act in accordance with the proscribed rules raises an important constitutional issue as to whether such lack of conformance contravenes the due process clauses of the Fifth and Fourteenth Amendments.

3. After a lapse of some nine years, the petitioner applied de novo for admission to the Florida bar examination in accordance with the rules in force and effect. The prescribed application together with exhibits and

fees were rejected by the Florida Board of Bar Examiners on the ground that the rules do not provide for a re-application. It is axiomatic that where there is no prohibition for the performance of an act, such an act is permissable, proper and lawful.

While Florida has no case directly in point, reference is made to APPLICATION OF UBL, Fla. 169 So. 2d. 488. In the Ubl case, specifications were prepared and served on Ubl setting out in detail certain charges. The charges were found to be correct and the Florida Supreme Court permitted, without prejudice, the right to the petitioner to make a new application to the Florida Board of Bar Examiners at any time after five years.

This Court has consistently held that the right to exercise the profession of an attorney or any other occupation cannot be denied by a state in a manner that is capricious or arbitrary and that exclusion cannot be made for reasons that contravene the due process or equal protection clauses of the Fifth and the Fourteenth Amendments. Re Burr, 9 Wheat 529, 6 L. ed. 152; Cohen v Hurley, 366 U.S. 117, 81 St. Ct. 954, 6 L. ed. 2d 156; Konigsbeg v State Bar of California, 353 U.S. 252, 77 S. Ct. 722, 1 L. ed. 2d. 81, later appeal 366 U.S. 36, 81 St. Ct. 977, 6 L. ed. 2d. 103; Wilner v Committee on Character and Fitness, 373 U.S. 96, 83 St. Ct. 1175, 10 L. ed. 224.

It is far beyond reason and the concept of fair play and in utter disregard of the provisions of the Constitution to forever preclude re-application. Such preclusion, especially to one who has spent years in preparation and study for a particular profession can prove disastrous. It would seem to be in the nature of cruel and inhuman

punishment to categorically state that one who was refused acceptance of an application must forever be barred from again applying.

We firmly believe that this Court should consider this substantial and fundamental question which is repugnant to due process.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HERMAN GRAYSON,
Attorney for Petitioner
940 Lincoln Road
Miami Beach, Florida

APPENDIX A

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1965

TUESDAY, NOVEMBER 16, 1965

CASE NO. 34,472

IN RE: DAN PIVER,
Petitioner

Petitioner has filed petition for leave to file a new application for admission to the Bar examination and for other relief; and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

A True Copy

TEST:
SID J. WHITE
Clerk Supreme Court.

cc: Mr. Dan Piver
Honorable James B. Tippin, Jr.

APPENDIX B(a)

FLORIDA BOARD OF BAR EXAMINERS
Supreme Court Building
Tallahassee, Florida

March 26, 1956

Mr. Dan Piver
8851 Carlyle Avenue
Miami Beach 41, Florida

Dear Mr. Piver:

This letter will confirm my oral statement made to you on March 17, 1956, concerning the action taken by the Florida Board of Bar Examiners on your application for admission to the Bar Examination of this State.

On March 17, 1956, the Florida Board of Bar Examiners denied your application for admission to the Bar Examination of this State in that you do not meet the requirements of Rule IV, Section 22(c) of the Rules Relating to Admission to The Florida Bar, as pertains to character and fitness.

Cordially yours,

JAMES B. TIPPIN, JR.
Executive Secretary

JBT/jd

APPENDIX B(b)

FLORIDA BOARD OF BAR EXAMINERS

Supreme Court Building

Tallahassee, Florida

April 5, 1956

Mr. Dan Piver
8851 Carlyle Avenue
Miami Beach 41, Florida

Dear Mr. Piver:

This will acknowledge receipt of your letter of March 2, 1955.

I regret to advise that you not only do not meet the pre-legal educational requirements as provided by paragraph (c), Section 22, Article IV, of the Rules of the Court governing the Florida Board of Bar Examiners, but in the opinion of the Board you do not measure up to the standard of character and fitness required by these Rules.

This conclusion was reached in part because of the highly questionable character of your personal and official dealings with the records and assets of Key Chemical Corporation, as well as the evident absence of good faith in your dealings with fellow stockholders. You, no doubt, are thoroughly familiar with these most questionable transactions because you were questioned in detail at the Board meeting when you appeared before it, and you are familiar with the facts revealed in the transcript

of proceedings of a meeting held at Medley, Florida, at the plant of Key Chemical Corporation on November 23, 1955.

A further detail of these and other acts on your part, which are all familiar to you, would serve no useful purpose in re-stating here.

Sincerely yours,

JAMES B. TIPPIN, JR.
Executive Secretary

JBT:ic
CC: The Honorable Olin E. Watts, Chairman

APPENDIX B(c)

FLORIDA BOARD OF BAR EXAMINERS

April 8, 1965

Mr. Dan Piver
8851 Carlyle Avenue
Surfside 54, Florida

Dear Mr. Piver:

This will acknowledge receipt of your letter of April 7, 1965, and enclosures.

In that there is no precedent for the receipt of an application from an applicant previously denied by this Board, acceptance or refusal of your application must be decided upon by the full Board. For this reason, we will hold your check no. 1860 and your application in abeyance until such time as the Board can issue an administrative ruling as to whether or not you may file a new application.

Please do not anticipate receipt of a decision in this matter at an early date for the Board is totally engaged at the present time in the grading of the papers from the last Florida Bar Examination.

Sincerely yours,

JAMES B. TIPPIN, JR.
Executive Director

JBT:ac

APPENDIX B(d)

FLORIDA BOARD OF BAR EXAMINERS

May 25, 1965

Mr. Dan Piver
8851 Carlyle Avenue
Surfside 54, Florida

Dear Mr. Piver:

This is to advise you that this Board, while in formal session during May 21, 1965, found that the Rules Relating to Admission to The Florida Bar do not provide for a re-application.

Pursuant to the above decision, please find enclosed the entire application and allied documents including your Check no. 1860 drawn to the order of this Board on April 7, 1965, in the amount of $245 which you mailed to this office on April 7, 1965, and which were received April 8, 1965; Cashier's Check No. 143103 in the amount of $5 and other allied documents received in this office on April 19, 1965; and correspondence between you and Catholic University of American transmitted by your letter of April 26, 1965.

Sincerely,

JAMES B. TIPPIN, JR.
Executive Director

JBT:ac

CERTIFIED MAIL — Return Receipt Requested

APPENDIX C

CREATION OF FLORIDA BOARD OF BAR EXAMINERS

ORDER OF COURT

Pursuant to the provisions of Chapter 29,796, Laws of Florida, Acts of 1955, and by virtue of the inherent power of the Supreme Court of Florida to prescribe the qualifications that shall be required for admission to practise law and to admit suitable persons to practise law in said State, it is

Ordered that the following rules be and they are hereby adopted:

* * * *

ARTICLE IV. EDUCATIONAL, CHARACTER AND FITNESS REQUIREMENTS.

Section 20 . . . . .

Section 21. If the candidate shall be dissatisfied with the Board's recommendation about his character or fitness, the Executive Secretary shall place the file and other available information with the Supreme Court, and such Justice or Justices thereof as shall be designated by the Chief Justice shall interview and hear such candidate and make such inquiry of the Board and others as shall be necessary to a decision as to whether such candidate meets the character and

fitness requirements. The Justice or Justices so designated shall make a recommendation to the Court and the final action of the Court shall be duly entered in the minutes thereof.

Section 22 . . . . .

BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 1111

In Re: DAN PIVER,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE FLORIDA BOARD OF BAR EXAMINERS IN OPPOSITION

OPINIONS BELOW

The order of the Supreme Court of Florida denying petitioner leave to file a new application is included as appendix "A" in the Petition. Letters from the Florida Board of Bar Examiners to the Petitioner which notified him of the action taken on his application are found at appendix "B(a)" and appendix "B(b)" of the Petition.

JURISDICTION

The order sought to be reviewed was entered November 16, 1965. Petitioner moved to amend the final order on December 2, 1965, and the motion was denied on January 25, 1966. Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state may deny an applicant the right to take the bar examination when the applicant fails to meet ordinary pre-legal and legal academic standards prescribed by that state.

2. Whether an applicant may, after being denied admission to the bar examination because he failed to meet academic requirements and because he lacked requisite character and fitness, and without seeking reconsideration nor judicial review of said denial, seek to attack said denial nine years later on the grounds he was denied due process.

STATEMENT OF THE CASE

In December of 1955, Petitioner filed an application to take the bar examination with the Florida Board of Bar Examiners. Section 22(a), Article IV, *Rules of the Supreme Court of Florida Relating to Admission to the Bar* required two years pre-legal training or equivalent. (Appendix A) Section 22(b), Article IV, *Rules of the Supreme Court of Florida Relating to Admission to the Bar,* required applicants to be graduates of full time accredited law schools. (Appendix A) The Petitioner could meet neither of the foregoing requirements.

An exception to these *Rules* is provided by Section 22(c) of Article IV of the *Rules* which permits an applicant to submit an abstract of ten years of practice in the District of Columbia or in a sister state and

> "If a thorough consideration of this abstract shows ... that his academic and legal scholarship conform to approved standards and sum up to the equivalent of that required of other candidates for admission, the Board may, in its discretion, admit him to the examination"

Section 22(c) also requires that the applicant be possessed of the requisite character. (Appendix A)

Since Petitioner did not have two years pre-legal training and was not a graduate of a full time accredited law school he sought admission under the exception to the *Rules*. He submitted an abstract of only one page and appeared before the Board in his own behalf.

Petitioner was advised orally that he had not met the educational requirements immediately following the hearing. On March 26, 1956, the Executive Secretary by letter advised the Petitioner that he did not meet the requirements of *Rules* IV, Section 22(c). (Pet. Appendix B(a).)

Petitioner wrote the Board on April 2, 1955, criticizing its action, and asking for another appointment to take the examination and that he be allowed to take the examination in July. (Appendix B)

By letter dated April 5, 1956, the Board advised the Petitioner that, not only did he fail to meet the pre-legal requirements of Section 22(c), *Rule* IV, but he also failed to measure up to the standard of character and fitness required by the *Rules*. (Pet. Appendix B (b).)

Petitioner did not reply to this letter nor express dissatisfaction with its contents. Petitioner did not, as provided by Section 70, Rule VI, *Rules and Regulations of the Florida Board of Bar Examiners*, apply for reconsideration. (Appendix C) Neither did Petitioner seek review by the Supreme Court as provided by Section 21, Article IV, *Rules of the Supreme Court of Florida Relating to Admission to the Bar*. (Appendix A)

Nine years later, on April 7, 1965, Petition filed an application, again under Article IV, Section 22(c) of the *Rules*. The Executive Secretary of the Board advised the petitioner that there was no precedent for a re-application and that he would present the matter to a formal session of the Board. Thereafter, Petitioner was advised that the *Rules* do not provide for re-application and his application was returned.

On July 5, 1965, Petitioner filed an Original Petition for Leave to File a New Application for Admission to the Bar Examination and for other Relief, together with Exhibits and a brief in support of the Petition, in the Supreme Court of Florida.

The Board filed a Response and Brief in reply.

The Supreme Court of Florida denied the Petition.

The Supreme Court of Florida did not have to reach any constitutional questions raised by Petitioner because his denial was based, apart from considerations of character and fitness, on his failure to meet the academic requirements of the *Rules*. Petitioner moved to amend the final order of the Court. The Court denied the Amendment.

Petitioner now seeks certiorari.

REASONS FOR DENYING THE WRIT

1. The requirements of two years pre-legal training and graduation from an accredited law school, in effect in 1955, were on their face reasonable and rationally related to the fitness to practice law. *Schware v. Board of Bar Examiners* (1957) 353 U. S. 232, L. Ed. 2d 796, 77 S. Ct. 752 of his brief. The State was not required to permit an exception to these requirements, but this it did, permitting the Board to consider an abstract submitted by an applicant to establish, if he could, that he possessed the equivalent of the academic requirements.

2. Petitioner seeks to raise the due process provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States in Question No. 1 of his brief. (p. 2, Pet.) The question posed does not apply to the present facts, because:

First, the evidence of the applicant's good moral character was something less than "overwhelming" or the applicant would not have been denied.

Secondly, the applicant was furnished reasons for his denial in the Board's letter of April 5, 1956, to wit: the " . . . highly questionable character of your personal and official dealings with the records and assets of Key Chemical Corporation, as well as the evident absence of good faith in your dealings with fellow stockholders". (Pet. Appendix B(b).)

Thirdly, the applicant was never denied the opportunity for review. He did not apply for reconsideration by the Board as provided in Rule VI, Section 70, of the *Rules and Regulations of the Florida Board of Bar Examiners.* (Appendix C). Petitioner claims he was

denied due process in that his file was not furnished to the Supreme Court for review as provided by Article IV, Section 21 of the Rules of the Supreme Court of Florida Relating to Admission to the Bar (Pet. Appendix C), which provides for a review if the candidate be dissatisfied. The applicant wrote the Board after receiving its letter of March 26, 1956, that he was dissatisfied and asking that he be furnished reasons for his denial. (Pet. Appendix B(a).) Reasons were furnished in the Board's letter of April 5, 1956. (Pet. Appendix B(b).)

Petitioner did not thereafter write the Board or the Court. For all the Board knew, any questions applicant may have had about its decision were answered in its letter of April 6, 1956. If applicant had indicated that he was still dissatisfied, his file would have been furnished to the Supreme Court pursuant to Rule 21. He made no such indication.

3. Petitioner seeks primarily to bring himself under the umbrella of *Wilner v. Committee on Character and Fitness,* 373 U.S. 96, 10 L. Ed. 2d 224, 83 S. Ct. 1175, and *Schware vs. Board of Bar Examiners,* 353, U. S. 232, 1 L. Ed. 796, 77 S. Ct. 752.

For the reasons previously indicated, the *Wilner* and *Schware* situations do not apply here. But assuming, *arguendo,* that the denial was based solely on character grounds and that no question of academic sufficiency was raised, the proceedings were adequate to bring the case within *Wilner* and *Schware* requirements. As required in *Wilner,* the letter of April 6, 1956, from the Board to the applicant indicated its decision was based

on his own statements. [1] And see, *In Re Latimer* 11 Ill. 2d 327, 143 NE 2d 20, cert. den. and app. dismissed, 355 U. S. 82, 2 L. Ed. 2d 111, 78 S. Ct. 153 (1957).

4. Petitioner complains that the Board has no provision for re-application. He petitioned the Supreme Court of Florida to permit him to re-apply. The Court denied this Petition.

Rules for the Florida Board of Bar Examiners are promulgated by the Supreme Court of Florida. The Board itself has no provision for considering new applications after denial.

The Supreme Court of Florida has, as indicated in *Application of Ubl,* (Fla. 1964) 169 So. 2d 488, cited by Petitioner, permitted a Petitioner to make a new application after a lapse of a certain number of years. The Court has also done this in other unreported cases. Thus, an applicant once denied by the Board is not totally without remedy.

---

[1] Procedures now afforded applicants go far beyond usual standards of due process. Extensive investigations are made of each applicant's background. Where the matters are serious, the applicant is afforded an informal hearing which is basically inquisitorial in nature. He may have counsel. If, after informal hearing, the Board is still not satisfied, detailed specifications setting out the matters wherein the Board feels the applicant is deficient are served on the applicant. The applicant files an Answer, admitting or denying the allegations, and setting forth any affirmative matters in extenuation or mitigation he may desire.

The applicant is afforded a formal hearing on the specifications. He is entitled to confrontation and cross-examination of witnesses against him. He may obtain a list of the Board's witnesses prior to the hearing. He is entitled to utilize the Board's subpoena powers and may call witnesses in his own behalf. He may have counsel. If the Board's decision is adverse, he is furnished with detailed findings of fact and conclusions of law. Transcripts of both the informal and the formal hearings are made and are available to the applicant. See Tippin, "Technique of Character Investigation: Viligence with Due Process" 32 *The Bar Examiner* 38 (1963).

Even if the Court would not permit a new application under any circumstances to any applicant, no question of due process would be raised. But applicant here petitioned the Supreme Court of Florida to permit him to re-apply. The Court did not state its reasons in its order denying the Petition, but obviously its order was based on Petitioner's failure to meet academic equivalency requirements; a point which was raised in the Board's brief. At no time did petitioner suggest to the Board or the Court that he was now more able to satisfy the academic equivalency requirements than he was in 1955.

Nowhere in his Petition does Petitioner allege that he can now comply with the academic requirements of the Rules nor does he allege that he can now offer additional evidence of practice or related matters that would bring him under the exeception provided by Rule 22(c).

The decision as to whether practice in another state and related experience constitutes the equivalent of prelegal education and law school graduation is necessarily a substantive determination. Petitioner's one page abstract simply failed to establish, in the opinion of the Board, the academic equivalency contemplated by the Rules.

CONCLUSION

Applicant was denied admission to the Bar examination because (1) he failed to satisfy academic equivalency requirements and (2) he lacked the requisite character and fitness. No question of due process is raised by the first ground of denial. The standards of due process were met in reaching the second ground. There is no substantial question here which merits the Court's time and attention.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

A. DALLAS ALBRITTON, JR.
Attorney for Board
Supreme Court Building
Tallahassee, Florida

APPENDIX A

RULES

OF THE

SUPREME COURT OF FLORIDA

Relating to Admissions to the Bar
(In effect in 1955-56)

Section 22

Every applicant is also required: (a) To furnish the Board satisfactory evidence that the applicant has completed at least two years in-residence college work, or its equivalent, such college work to consist as a minimum of one-half the work acceptable for an academic Bachelor's Degree, granted on the basis of a four-year period of study in a college or university on the approved list of colleges and universities of the American Association of Colleges and Universities.

(b) To furnish the Board satisfactory evidence of graduation from a full-time accredited law school at a time when, or in the same calendar year in which such school was so accredited. The term "accredited law school" has reference to any law school approved or provisionally approved by the the American Bar Association or which is a member of the Association of American Law Schools.

(c) Attorneys who were in good standing in other states of the United States of America prior to their residence in Florida as required herein, may, notwithstanding the provisions of paragraph (a) and (b) hereof, be permitted to take the bar examination to be admitted to practice law in Florida (1) upon furnishing similar requirements as to fitness as are required of other candidates to take the examinations; (2) upon producing such evidence as the Board may require, that such applicant was in the practice of law for at least ten

years immediately preceding the beginning of his residence in Florida, that he was in good standing at the Bar of the state from which he came; and (3) the Board may require an abstract showing the scope and character of the applicant's previous experience and practice at the Bar, his academic and legal training and his cultural background. If a thorough consideration of this abstract shows that the applicant is a lawyer of high character and ability, that his professional conduct has been above reproach, and that his academic and legal scholarship conform to approved standards and sum up to the equivalent of that required of other candidates for admission for the examination, the Board may in its discretion admit him to the examination. In evaluating academic and legal scholarship, the Board is clothed with a broad discretion and as basis for credit may take into consideration high school attendance, college attendance, law school attendance, night school attendance, study under a preceptor, study in a law office, lecture courses, independent study and research or any other method of study that it deems worthy of credit. The applicant's experience as a practitioner may also be considered in this connection.

APPENDIX B

8851 Carlyle Avenue
Miami Beach 41, Florida
April 2, 1956

Mr. James B. Tippin, Jr.
Executive Secretary
Florida Board of Bar Examiners
Supreme Court Building
Tallahassee, Florida

Dear Mr. Tippin:

With respect to your communication of March 26, 1956, please be advised that same is not in accord with your verbal statement made to me on March 17, 1956. At that time you advised me that I was not permitted to take the examination because the Board felt that I did not meet the educational standards as set forth in your rules: I asked that you request the Board to advise me as to what the standards were and to advise the particular grounds for the refusal. Your answer was that you had no authority to tell me anything except as directed by the Board. I now inquire as to the change in reason and request that you state with particularity the reason for denial on the basis of character and fitness.

For the record I wish to state that I considered the hearing or examination given me as grossly unfair. May I also remind you and the Board that the chairman apologized at least twice for his unfair attitude while subjecting me to a brutal examination. You and the Board well knew that I was asked to remain during the lunch period and that I was being subjected to the examination without any lunch. I was kept waiting from 9:15 A.M. until sometime after 3:00 P.M. without the courtesy of being permitted to eat. I noticed, of course, that the Board and other candidates were permitted time for lunch.

Under the circumstances outlined above, I wish to take exception to the attitude of the Board, the failure to state with particularity the reason for denial, the unfair treatment afforded me and respectfully request that I be given an opportunity to appear before the Board immediately and be permitted to take the examinations in July.

May I have the courtesy of a reply within the next ten days.

Yours very truly,
Dan Piver

APPENDIX C

RULES AND REGULATIONS

OF THE

FLORIDA BOARD OF BAR EXAMINERS

RULE VI

RECONSIDERATIONS

Section 70. If any candidate shall be dissatisfied with the Board's recommendation about his character, fitness or general qualifications, such candidate may, within sixty (60) days after notice of the Board's recommendation, file with the Board a petition for reconsideration. The petition must contain new and additional matter which the Board has not previously considered. Only one such petition for reconsideration may be filed.